

STATE OF CALIFORNIA  
DEPARTMENT OF INDUSTRIAL RELATIONS

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DECISION ON ADMINISTRATIVE APPEAL

RE: PUBLIC WORKS CASE NO. 2000-040

CITY OF PORTERVILLE

LEASE TO TULARE COUNTY FAMILY SUPPORT

SERVICES PROGRAM

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The undersigned, having reviewed the administrative appeal filed by the City of Porterville, said appeal is hereby denied for the reasons set forth in the initial coverage determination dated March 12, 2001, which is incorporated by reference herein. This decision constitutes final administrative action in this matter.

Dated: 5/2/01

  
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Stephen J. Smith, Director

## DEPARTMENT OF INDUSTRIAL RELATIONS

OFFICE OF THE DIRECTOR

455 Golden Gate Avenue, Tenth Floor

San Francisco, CA 94102

(415) 703-5050



March 12, 2001

Mr. Curtis A. Morgan  
Field Representative  
United Brotherhood of Carpenters, Local #1109  
319 North Church Street  
P.O. Box 1069  
Visalia, CA 93279

Re: Public Works Case No. 2000-040  
City of Porterville  
Lease to Tulare County Family Support Services Program

Dear Mr. Morgan:

This constitutes the determination of the Director of Industrial Relations regarding coverage of the above referenced project under California's prevailing wage laws and is made pursuant to Title 8, California Code of Regulations, section 16001(a). Based on my review of the facts of this case and an analysis of the applicable law, it is my determination that the improvements and alterations undertaken as part of an expansion and renovation project ("Project") at 259 North Main Street in the City of Porterville ("City"), County of Tulare ("County"), California, is a public work subject to the payment of prevailing wages.

This case involves two agreements, one between Ennis Commercial Properties, LLC ("Ennis"), and City, and the other between City and County for the lease of a building. Ennis and the City entered into a master lease on March 7, 2000. This lease calls for Ennis to lease to City a building as yet to be remodeled for the sum of \$10,473.00 per month with a 3% annual increase. The lease is for a term of 10 years, ending approximately March 2010.

Simultaneous with entering into the master lease agreement, City and County entered into a sublease agreement, also dated March 7, 2000, that provides that City will lease the entire building to County on terms identical to those contained in the master lease. The sublease states that City will arrange for all tenant improvement and renovation work required by County. The improvements and alterations were done by Ennis under a private construction agreement.

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County currently houses its Family Support Services Program in the building. The rent payable under the sublease is governed by the terms of the master lease and City merely collects the funds from County and forwards them to Ennis. Section 13.18 of the master lease makes clear that Ennis and City will be entirely dependent on County and certain federal and state funding it may receive to pay the rent provided in the agreement. Section 5 of the sublease states that the lessee County will lease the premises from City on the terms and conditions set forth in the master lease. Section 6 of the sublease states that County will pay City the rent due at the times and amount called for in the master lease unless Ennis and City notify County in writing to pay the rent directly to Ennis. Similarly, under Section 8 of the sublease, the maintenance, repair, upkeep and utilities for the building will be paid by County consistent with the terms of the master lease and at County's sole cost and expense. At no time does City plan to lease or utilize any of the space in the building, nor does it plan to pay the rent itself.

Labor Code section 1720.2 states:

For the limited purposes of Article 2 (commencing with Section 1770) of this chapter, "public works" also means any construction work done under private contract when all of the following conditions exist:

(a) The construction contract is between private persons.

(b) The property subject to the construction contract is privately owned, but upon completion of the construction work, more than 50 percent of the assignable square feet of the property is leased to the state or a political subdivision for its use.

(c) Either of the following conditions exist:

(1) The lease agreement between the lessor and the state or political subdivision, as lessee, was entered into prior to the construction contract.

(2) The construction work is performed according to plans, specifications, or criteria furnished by the state or political subdivision, and the lease agreement between the lessor and the state or political subdivision, as lessee, is entered into

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during, or upon completion of, the construction work.

The elements of the statute are met as follows: (a) the construction contract is between private persons; (b) the property subject to the construction contract is privately owned, but upon completion of the construction work, County will occupy 100% of the assignable square feet of the property under the terms of the lease for its own use; and (c) the lease agreements between Ennis and County were entered into prior to the construction work. In addition, it is apparent that at least the tenant improvement work is being performed in accordance with plans, specifications, or other criteria furnished by County.

Labor Code section 1720.2 is applicable to the arrangement between Ennis and City, and City and County. The statute was enacted to prevent public agencies from arranging to lease space and avoid prevailing wage obligations by having the lessor arrange for the actual construction. Section 1720.2 does not require a direct lessor/lessee relationship between Ennis and County. Indeed, the purpose of the statute would be defeated if a developer or contractor could simply arrange, as here, for a nominal tenant to act as the landlord for the purposes of a lease to a public entity. The fact that the two lease agreements precede the construction work agreement make clear that Ennis knew it was leasing the entire available space of the building to County.

Further, City's charter city status does not shield this project from public works coverage under section 1720.2. Under Article XI, section 5 of the California Constitution, a city "may make and enforce all ordinances and regulations in respect to municipal affairs, subject only to restrictions and limitations provided in their several charters and in respect to other matters they shall be subject to general laws." City has, by operation of its charter, availed itself of the power to exercise all powers with respect to municipal affairs and the general welfare of the inhabitants of City.

Insofar as a charter city legislates with regard to municipal affairs, its charter prevails over general state law. The prevailing wage law, a general law, does not apply to the public works projects of a charter city so long as the projects in

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question are within the realm of municipal affairs.<sup>1</sup> In general, the term is defined as a matter that affects the local citizens rather than the people of the state generally, whereas a matter of statewide concern extends beyond the local interests at stake.<sup>2</sup>

In *Southern California Roads Co. v. McGuire* (1934) 2 Cal.2d 115, 39 P.2d 412, the California Supreme Court set forth the following factors for determining whether a project was exclusively a municipal affair subject to the charter city exemption: (1) the extent of non-municipal control over the project; (2) the source and control of the funds used for the project; and, (3) the nature and geographic scope of the project. Application of these factors to the present case is appropriate.

#### The Extent of Non-Municipal Control Over the Project.

In order for the City to assert that this arrangement is a municipal affair, it would have to deal with only matters of traditional city concern and municipal funds. Here, City is brokering an agreement between Ennis and the County to reduce Ennis' costs in renovating the building and encourage County to take up occupancy with its Family Support Services Program. Here, the project is manifestly not a purely municipal affair because the lessee will be the County, a separate political subdivision of the State of California.

#### The Source and Control of Funds Used for the Project.

City is merely a conduit by which Ennis and County have entered into a lease arrangement. County is responsible for the entire rent and all associated utilities and expenses. It is paying that rent with a combination of County, state and federal funds. Clearly, this project is not paid for with City funds and is, therefore, not a purely municipal affair.

#### The Nature and Purpose of the Project.

As noted above, the sole purpose of these agreements is to provide County with a location to house its Family Support Services Program. It is evident from the minutes of the City Council, dated February 1, 15, and 16, 2000, that the purpose of

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<sup>1</sup> *City of Pasadena v. Charleville* (1934) 215 Cal. 384, 10 P.2d 745; *Vial v. City of San Diego* (1981) 122 Cal.App.3d 346, 175 Cal.Rptr. 647.

<sup>2</sup> 66 Ops.Cal.Atty.Gen. 266, 271-72.

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these agreements is to entice County to place some of its offices within City. This project does not house City offices, is not paid for with City funds, and does not carry out a City function. It is clearly not a matter of purely municipal concern.

For these reasons, the above project is not a municipal affair subject to the charter city exemption from prevailing wage obligations.

Sincerely,

A handwritten signature in cursive script that reads "Stephen J. Smith".

Stephen J. Smith  
Director